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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

17 Cr. 60 (JSR)

5 EDWARD J. SERVIDER aka Nicholas Halden,

6 Sentence

7 Defendant.

8 -----x

9 New York, N.Y.

10 July 27, 2017

4:41 p.m.

11 Before:

12 HON. JED S. RAKOFF,

13 District Judge

14 APPEARANCES

15 JOON H. KIM

16 Acting United States Attorney for the
Southern District of New York

17 CHRISTINE MAGDO

Assistant United States Attorney

18 JOSEPH V. SORRENTINO

19 Attorney for Defendant

20 ALSO PRESENT: CONSTANTINE VOULGARIS, Special Agent FBI

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(Case called)

THE COURT: We're here for sentence. The total offense level is 25, the criminal history category is I, and the guideline range is 57 to 60 months. The probation office recommends 57 months' imprisonment. However, the Court, of course, is not bound by the guidelines and will, therefore, consider all the factors under Section 3553(a).

Against that background, let me hear first from defense counsel, then from government counsel, and then from the defendant if he wishes to be heard.

MR. SORRENTINO: Thank you, your Honor. Your Honor, may I stand at the counsel table or --

THE COURT: Sure.

MR. SORRENTINO: Judge, as you know, we have submitted to your Honor dated July 19 a letter memorandum seeking your Honor to sentence Mr. Servider to a term of probation. We are aware of the probation department's recommendation of 57 months. We are aware that the government is asking your Honor to sentence Mr. Servider within the guideline range, but for the reasons we set forth in our memorandum, for the reasons set forth in the many character letters submitted on behalf of Mr. Servider, and, of course, we submitted to your Honor a somewhat lengthy letter from Mr. Servider. Quite frankly, Judge, in all my years of practice, that's about the longest letter I've allowed a client to submit to a judge before

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1 sentencing, but I thought it was important because I thought
2 that it, quite frankly, illuminated quite in detail
3 Mr. Servider's involvement in the conspiracy before your Honor.

4 Judge, we are asking you to sentence Mr. Servider to
5 probation for some obvious reasons and maybe some not so
6 obvious reasons. He is 29 years old. He has never been in
7 trouble before in his life. He has been married about three
8 years now.

9 THE COURT: He committed a serious and sophisticated
10 crime involving millions of dollars, involving at least 100
11 victims. He wasn't the prime mover, but the prime mover
12 received a sentence -- I'm trying to remember if it was
13 something like eight years, or something like that.

14 MS. MAGDO: Eighty-seven months.

15 THE COURT: So what possible basis would there be for
16 me giving him probation?

17 MR. SORRENTINO: Frankly, to be --

18 THE COURT: And your submission was excellent and much
19 to be commended, but I'm, frankly, a little astonished that you
20 would ask for probation in a situation like that. A crime of
21 that magnitude that he knowingly, willfully participated in
22 over a substantial period of time doesn't merit any prison
23 time?

24 MR. SORRENTINO: Well, Judge, our argument to your
25 Honor, as we put forth in the memo -- and I will obviously

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1 answer your Honor's question -- we asked for straight
2 probation, Judge. I'm not going to be disingenuous, Judge. I
3 knew that when we asked for it, it was a stretch. I'm not
4 going to suggest to your Honor that I didn't realize that, when
5 we made that request, it would be an unusual sentence; it would
6 be a stretch from perhaps the norm. But I thought,
7 nevertheless, Judge, it was reasonable under all of the
8 circumstances when you focus on the factors in Section 3553 in
9 terms of the nature and circumstances of the crime and the
10 characteristics and history of the defendant.

11 I mean that by this, Judge: Mr. Servider from the
12 very beginning has taken the position that although he, quite
13 frankly, committed what I think would be considered to be fraud
14 in the inducement by using a false name, by using a false
15 trading history, by inducing clients to invest under false
16 pretenses and therefore, quite frankly, allowing the money to
17 be misspent, nevertheless, Judge, it has always been his
18 position -- it remained his position during his allocution and
19 it remains his position today -- that the actual stealing of
20 the money, the actual outright stealing of the money, was
21 carried on by Mr. Ekdesman and Mr. Vilner, unbeknownst to him.
22 And quite frankly, Judge, that was a situation where on the
23 day-to-day basis, although Mr. Servider --

24 THE COURT: Wait a minute. Are you saying that he did
25 not understand that his making these false representations was

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1 for the purpose of either him or Mr. -- I can never pronounce
2 it -- Ekdesman to obtain money and property?

3 MR. SORRENTINO: It was certainly for the purpose of
4 obtaining clients who would then invest with them. That was
5 certainly the intention, Judge.

6 THE COURT: To their detriment, as it turned out,
7 because as we know from some of the victims whose victim impact
8 statements were put before the Court, some of the victims were
9 very seriously harmed.

10 MR. SORRENTINO: They were, Judge, and I read those
11 impact statements.

12 THE COURT: Are you saying that he had no
13 responsibility for that?

14 MR. SORRENTINO: No, I'm not saying that at all,
15 Judge. I'm saying that he fully accepts the responsibility
16 that he did have, but his responsibility was in this way,
17 Judge: He did not have an intention to "rip off people." He
18 did not have an intention to steal their money. Yes, he acted
19 criminally in lying to them and misrepresenting to them in
20 order to induce them to give the money, but once the money was
21 given over, he believed on a day-to-day basis that that money
22 was being transferred to Mr. Vilner who was then trading it
23 according to his computerized trading system and that the money
24 was actually being traded. That was his belief.

25 THE COURT: I'm not sure why that matters. In other

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1 words, you're saying that, as he's already pled guilty, he knew
2 he was making false and fraudulent statements knowingly,
3 intentionally, and willfully for the purpose of inducing people
4 to make investments that they otherwise might not have made,
5 but he didn't know for sure what the crooks he was associating
6 with would do with that money, or he had a hope and a belief
7 that they would nevertheless do good things with it?

8 MR. SORRENTINO: Well, Judge, I believe -- and I say
9 this most respectfully to your Honor -- that it was an actual
10 belief that he had.

11 THE COURT: All right. So he had an actual belief
12 that the crooks he had chosen to assist were really out to do
13 good things?

14 MR. SORRENTINO: Well, Judge, I think at the time, the
15 way the business was being conducted, it was not apparent to
16 him and it did not become apparent to him that the money was
17 actually simply not being traded. I mean, that was never told
18 him to.

19 THE COURT: Supposing it had been traded, contrary to
20 the facts of this case, but just to follow your argument or
21 make sure I understand it. Are you saying that if a defendant
22 induces people to put up millions of dollars by lying to them
23 to get them to do that, but his hope, his expectation, his
24 actual belief is my friends who put me up to this will,
25 nevertheless, trade legitimately with those funds? So

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1 supposing on that scenario, if that were the actual scenario
2 and they did trade and they lost every damn penny in bad
3 trades, would that make him any less responsible?

4 MR. SORRENTINO: I think it would make him less
5 responsible, Judge, for being a member of the conspiracy and
6 for being subjected to being sentenced by your Honor, to being
7 punished. Our argument is that in terms of the entire case
8 with Mr. Ekdesman, who is far more culpable for the stealing
9 of the money, receiving 87 months --

10 THE COURT: There's no doubt that he's more culpable.
11 I'm not going to give a sentence of eight years or anything of
12 that magnitude, but we're not talking about that. We're
13 talking about whether he deserves prison time for what he did.

14 MR. SORRENTINO: Yes, and our argument to your Honor
15 and our submission to your Honor is that he did not deserve
16 prison time because of the fact that he did not have the
17 intention for the money to be outright stolen, Judge. And
18 quite frankly, Judge, he will also have a very hefty forfeiture
19 imposed, as he should. He will have a significant restitution
20 imposed, as he should. And he will, quite frankly, Judge,
21 labor to satisfy both of those financial obligations for many,
22 many, many years to come. He will be on probation, as we have
23 requested, for a five-year period so that his liberty will be
24 significantly curtailed. If he is on probation, he will be
25 able to continue to address the mental health issues that he

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1 has and the substance abuse issues that he has. And quite
2 frankly, Judge, we know that, of course, not going away to
3 prison is a more desirable sentence, but we respectfully did
4 not view probation as a walk or as a light sentence or as
5 something that, quite frankly, wouldn't be significant under
6 Section 3553 to impart the seriousness of the offense when you
7 look at the entire crime and the entire conspiracy and the way
8 the various members, that being Mr. Ekdeshman and Mr. Vilner,
9 were going to be punished.

10 We also asked for it, Judge, in light of the fact that
11 he was not a longtime friend of Mr. Ekdeshman who was brought
12 into Mr. Ekdeshman's confidences and had this told to him or
13 explained to him and went forward with the intention of
14 participating in Mr. Ekdeshman's ripoff scheme. He didn't do
15 that, Judge. And quite frankly, we asked for it because he's
16 29 years old, it's his first offense, he has a young family,
17 and he has a child on the way. And I know, your Honor, we
18 respect the victims and we respect the victim impact
19 statements. I am not suggesting to your Honor that this should
20 be minimized by this. I am merely suggesting that on balance,
21 on balance, a probationary sentence in light of all the factors
22 and circumstances is not necessarily a walk when you add to it
23 all of the other sanctions that I know the Court can and will
24 impose on Mr. Servider today. And that is why we asked for
25 what we asked for in our sentencing submission to your Honor.

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1 THE COURT: All right. Thank you very much. Let me
2 hear the government.

3 MS. MAGDO: Your Honor, I would rely principally on
4 the government's sentencing submission that was filed in this
5 case.

6 THE COURT: I was surprised, given this Court's
7 long-standing views, that the government would try to defend
8 before this judge a guideline sentence that is mostly -- more
9 than mostly, 80 percent based on the loss calculation. This
10 Court has many times pointed out to the government for years
11 now that while loss is clearly relevant, the notion that a
12 guideline calculation for someone who wasn't even the prime
13 mover should be determined to a level of 80 percent by the loss
14 calculation is, in this Court's view, irrational on its face,
15 totally contrary to the whole thrust of Section 3553(a), and
16 not to be seriously taken by any serious court. That message
17 has gotten through to some of your colleagues. I was surprised
18 it hadn't gotten through to you.

19 MS. MAGDO: Your Honor, I'm not suggesting that the
20 guidelines, qua guidelines, provide a reasonable sentence. All
21 I was attempting to do is start off by calculating the
22 guidelines upon which the parties agree.

23 THE COURT: The calculation was agreed upon, but as we
24 know, that's just a start and not binding on the Court. And
25 you argue in your memorandum for a guideline sentence,

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1 suggesting that the guidelines make perfect sense in this case.
2 I don't see how that can be seriously argued, but convince me
3 that I'm wrong.

4 MS. MAGDO: Certainly, your Honor. Again, as I said,
5 I'm not meaning to suggest that the guidelines provide anything
6 other than an initial calculation that we're all obligated to
7 make. The reason I spent any time on the guidelines at all is
8 that in the defense submission there was some argument that the
9 enhancements, not the loss amounts, but that the other
10 enhancements overstate the seriousness of the offense.

11 THE COURT: Well, I mean, that may or may not be, but
12 that's not what -- if you look, for example, at page 15 in the
13 presentence report, the base level for this crime is six and
14 then we add 16 levels because the loss was more than
15 \$1.5 million. So that right there gets you up to 22 out of 28,
16 28 being the final calculation. So even if we accepted 28 as
17 being right, that's 80 percent right there. Has nothing to do
18 with adjustments.

19 Then, of course, two levels are added because the
20 offense involved ten or more victims. I have no problem with
21 that. But noticing, if you will, the absurdity, if the crime,
22 as in this case, involved maybe a hundred victims, but you only
23 add a couple of levels, even though you would think in any
24 rational calculation that that would be a significant factor.
25 But, no, the guidelines say, oh, that's just two levels because

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1 we don't care so much about the victims. What we care about is
2 the dollar amount of the loss, and we apply that regardless of
3 the role of the offender, or largely regardless of that. What
4 are those guys thinking and what are you thinking in supporting
5 that kind of approach?

6 MS. MAGDO: So I have to go through the guidelines. I
7 have to say what the guidelines are that the parties agreed on.
8 I spent roughly two pages just walking through the guidelines,
9 then I spent five pages going through the 3553(a) factors. My
10 first factor was that Servider harmed scores of victims, and I
11 think that's not adequately captured by the two-point
12 enhancement. I think that's a very serious issue in this case.
13 I might also add these are not sophisticated investors. These
14 are people that they bought their phones numbers --

15 THE COURT: I'm just pointing out how the guidelines
16 don't really meaningfully address that aspect at all. By the
17 way, when there's four points for the fact that it was
18 commodities or the offense involved a violation of the
19 commodities law, why should that matter opposed to a violation
20 of any other law?

21 MS. MAGDO: Again, all I can say is that the
22 sentencing commission thought that people who --

23 THE COURT: Yeah, they did. That's why I'm saying
24 they're irrational.

25 MS. MAGDO: Well, be that as it may --

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1 THE COURT: Yes, but you're the one that says that I
2 should impose a guideline sentence because the calculation is a
3 good place to start.

4 MS. MAGDO: It is a place where we must start, but I
5 believe that based on the 3553(a) factors, a sentence of 57 to
6 60 months is sufficient, but not greater than necessary, in
7 this case. I'm happy to walk through the reasons.

8 THE COURT: You don't disagree that Mr. Ekdesman was
9 the prime mover?

10 MS. MAGDO: He was the one who originally started the
11 first fraud, yes. Whether he was the prime mover in the second
12 fraud, I guess it depends what you're getting at.

13 THE COURT: Well, what I'm getting at is while I don't
14 accept the suggestion that was made in some of the letters to
15 the Court that this defendant somehow had his will overborne by
16 this other gentleman, or anything like that -- and he himself
17 is not saying that; that's more other people -- it's hard to
18 see that he in any way is in the same basket as Mr. Ekdesman.

19 MS. MAGDO: Absolutely. If we want to say that
20 Mr. Ekdesman was culpable for twice the amount of fraud, let's
21 say, because he did the two schemes, I think that a sentence of
22 half of 87 months would be reasonable.

23 THE COURT: OK. Now we're talking closer to my
24 language. So you don't need to tell me why there needs to be
25 prison time here. I've heard the various arguments of defense

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1 counsel, but I'm not persuaded. So the real question is where
2 the sentence should be. And to my mind, something that neither
3 side has addressed as fully as they might, there's a body of
4 literature that suggests that in white-collar cases some prison
5 time is very important to send a general deterrence message,
6 but there's no study that indicates that a lot of prison time
7 has a meaningfully different effect on a white-collar persons
8 who are contemplating -- the most important factor, all the
9 studies show, is that people who commit these crimes get
10 caught. The second most important factor is that there be some
11 prison time. But there's no study that indicates, for example,
12 that six years is three times a better deterrent than two
13 years, to take an example.

14 So where do you think the Court -- I release you from
15 any obligation you may have under Department of Justice
16 guidelines to argue for a guideline sentence. Do you have a
17 view as to what is the appropriate sentence?

18 MS. MAGDO: Well, quite frankly, your Honor, I have
19 thought about this a lot in connection with his culpability
20 compared to Mr. Ekdesman. Undoubtedly, Mr. Ekdesman was at
21 least twice as culpable as Mr. Servider, but I do think that,
22 contrary to what the defense argues now, Mr. Servider set out
23 and started EJS with fraudulent intent. It was a fraud from
24 day one. I think that's actually a very important factor
25 compared to other cases where someone starts a legitimate

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1 business, they make some failing investments, and they panic
2 and they try to cover them up with additional investments, then
3 they lie to their investors. So I think that's an important
4 factor here.

5 I think another important factor is that even after
6 the CFTC shut down the original fraudulent operation,
7 Paramount, Mr. Servider continued with the fraud of EJS. Even
8 after Mr. Ekdeshman was arrested in connection with running
9 Paramount, Mr. Servider continued to run EJS. I think that's
10 very troubling. I think that goes to specific deterrence and
11 the need for a substantial sentence in this case.

12 In terms of numbers, I would say in the range of half
13 of what Mr. Ekdeshman received as a term of imprisonment would
14 be reasonable. Mr. Ekdeshman -- it's so personal. I reread
15 the sentencing transcript of Mr. Ekdeshman, which I didn't
16 myself handle. He had a child with a serious illness. At the
17 same time, after the CFTC shut down his first enterprise, he
18 immediately turned around and started with Mr. Servider the
19 second enterprise. So he was in violation of a court order, an
20 injunction, not to participate in this industry. So he --

21 THE COURT: By the way, the record should reflect,
22 this was before Judge Broderick, I believe.

23 MS. MAGDO: That's correct. So, again, it's very
24 individual. He had some mitigating circumstances, some
25 aggravating circumstances, neither of which are true for

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1 Mr. Servider. I would say there aren't any particularly
2 persuasive mitigating factors in Mr. Servider's case, and I
3 think the aggravating factors are the ones that I stated.

4 THE COURT: All right. Very good. Let me hear,
5 first, anything the defense counsel has to say and then from
6 the defendant if he wishes to be heard.

7 MR. SORRENTINO: Judge, what struck me from the
8 government's argument just now was the fact that if you do read
9 Mr. Servider's statement to the Court, there are so many
10 actions that he took during the life of EJS which would
11 indicate that he was seeking to actually establish trading and
12 compliance, etc. A person who is proceeding with the knowledge
13 that he is participating in an outright scheme to steal and has
14 no idea that the government is looking at him is taking action
15 every day that he intends to be his actual way that he intends
16 to conduct himself.

17 THE COURT: I come back to the point -- I get your
18 point, and I think that is a mitigating factor, but I think it
19 only cuts modestly in your favor because a person who lies to
20 people in order to get them to invest is stealing their money.
21 You talk about theft. That's theft.

22 MR. SORRENTINO: Judge, I can't argue against the fact
23 that we recognize in the law that fraud can be committed in
24 many ways, and that one of the ways --

25 THE COURT: It's not just -- excuse me.

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1 MR. SORRENTINO: Yes.

2 THE COURT: I don't think you need to be a lawyer to
3 understand this. If I walk up to someone and say, "Would you
4 like to buy the Brooklyn Bridge?" and, of course, I don't own
5 the Brooklyn Bridge, every two-year-old understands that's a
6 fraud, and that's the functional equivalent of what he did.

7 MR. SORRENTINO: Although, Judge, in this particular
8 instance, there was another party involved -- if I may just
9 finish -- and when he was making his representations to get the
10 money, quite frankly, he was committing the fraud at that point
11 in time, but he wasn't taking various sums of money from
12 investors saying: Aha, I know this money's being ripped off.
13 I know it's never going to be invested. I know that these
14 people are simply giving us money so I can give it to
15 Ekdesman, and he's going to do whatever he does with it with
16 Vilner. He didn't know that, Judge. So he overstepped the
17 line in, quite frankly, his failure in judgment and his failure
18 in morality to get these investors to invest under the proper
19 pretenses. He used false pretenses, but not because he thought
20 he was robbing and stealing their money at the time because,
21 quite frankly, Judge, he thought it was going to Vilner, while
22 Vilner was using it in his system, his computerized system.

23 If I may just say this, your Honor: Originally, when
24 the government gave us -- or arrested Mr. Servider, they gave a
25 complaint which laid out the scheme. They gave a breakdown of

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1 the money and how it had been allocated and paid and spent,
2 etc. They gave a breakdown of about \$1,658,000, but if you
3 look at the breakdown of where that money went, only 85,000
4 went to Mr. Servider. So I suggest to your Honor that if
5 Mr. Servider is a willing participant in the outright ripoff of
6 the victims' money, he would have made sure that he was getting
7 a much larger cut of what was being ripped off. That didn't
8 happen because he didn't know the money was being ripped off.
9 He didn't know that he could just take as much as he wanted to
10 because, quite frankly, Judge, he wasn't of the same mindset as
11 Ekdesman and he wasn't of the same mindset as Vilner.

12 So I understand where the government comes to you and
13 suggests to you that if you look at Ekdesman and he got 87
14 months, maybe we should cut it in half. I respectfully suggest
15 to you that even half of Ekdesman's sentence would far, quite
16 frankly, over-punish Mr. Servider for his part in the
17 conspiracy that took place here. It's plain to me now that
18 your Honor is not going to sentence Mr. Servider to probation.
19 That's obvious to anybody sitting in this courtroom. However,
20 judge, I would suggest to your Honor, most respectfully, that
21 the government's suggestion that somehow half of Ekdesman's
22 sentence is fair under Section 3553, I would argue to your
23 Honor that I do not believe it is fair under Section 3553
24 because I believe it would be over-punishing Mr. Servider under
25 the factors that we are to take into consideration under that

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1 statute. And I respectfully suggest to your Honor that an --
2 in our memo, Judge, we did, of course -- I'm sure your Honor is
3 well aware of it -- on page 10 just mention for a moment that a
4 2015 survey of the months of imprisonment for fraud defendants
5 in criminal history category I, as is Mr. Servider, were 34 and
6 24 months respectively after a trial.

7 So, quite frankly, Judge, I don't know, of course,
8 what went into those statistics and I don't know what those
9 trials were about, but just as an indication, those numbers
10 would be significantly less than what the government is asking
11 for.

12 THE COURT: But as you, I think, correctly appreciate,
13 those numbers mean very little for any individual case.
14 There's another number that the government sometimes tries,
15 though I was glad to see they didn't in this case, which is
16 according to the sentencing commission, over 50 percent of
17 white-collar defendants go on to commit further crimes. So
18 there's a 50 percent recidivism rate. But that is, if you
19 actually get into the weeds there, because they're talking
20 about either people who commit very low-level embezzlements
21 often because of economic needs, they get out, and they commit
22 another embezzlement, or they're talking about professional con
23 men who commit dozens of crimes. All these global statistics,
24 frankly, are near meaningless going both ways.

25 So let me hear from the defendant if he wishes to be

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1 heard. I'm sorry, the government.

2 MS. MAGDO: May I respond just briefly to one thing
3 defense counsel said?

4 THE COURT: Yes.

5 MS. MAGDO: And that's the point that Servider only
6 made -- I think he used a number in the 80,000 range, and that
7 is because paid directly to him in his name was approximately
8 roughly \$80,000, but there was also \$126,000 that was withdrawn
9 as cash out of the investor funds, and \$166,000 that was used
10 for debit card purchases. And we don't know which of the two
11 of them did that.

12 Finally, it's reflected in the fact that he's agreed
13 to forfeit to a money judgment of \$373,000. That's a much more
14 accurate reflection of what he profited from the scheme. That
15 is represented as the number that is the dollar amount that he
16 himself took in and received the benefit of. So just to clear
17 that up.

18 THE COURT: Let me hear from the defendant if he
19 wishes to be heard, unless there's anything else from defense
20 counsel.

21 MR. SORRENTINO: No, Judge, but Mr. Servider does have
22 a prepared statement he'd like to read to your Honor.

23 THE COURT: Sure, absolutely.

24 THE DEFENDANT: Your Honor, thank you for letting me
25 speak here today. I don't want to take up too much of the

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1 Court's time.

2 MR. SORRENTINO: Slow down.

3 THE DEFENDANT: As you know, I wrote you a pretty
4 lengthy letter, so I'm sure that you -- I believe that you know
5 where I stand on the matter at hand.

6 First, I'd like to extend my sincerest apologies to
7 the victims in this case. I know many people were affected by
8 this, and they will never truly know how sorry I am. I never
9 meant for any of this to happen. I want to apologize to my
10 family for letting them down. They are honorable people that
11 raised me the right way. All I ever wanted to do was make them
12 proud. Last thing, I want to apologize to my wife Patricia for
13 putting her through all this. She's expecting our first baby,
14 and I want to thank her for standing by me through all this.

15 And, your Honor, I've made mistakes here, and I've
16 never been to court in my life, but I've grown and learn a lot
17 from them. I stand before you today asking for your mercy to
18 allow me to move past this and give me the opportunity to try
19 to right my wrongdoings.

20 Thank you, your Honor.

21 THE COURT: Thank you.

22 So the Court has already indicated in general terms a
23 lot of the considerations that it thinks are relevant here to a
24 sentence under Section 3553(a). First, as everyone agrees, it
25 should be substantially less than the sentence for

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1 Mr. Ekdesman. Second, the just punishment component alone of
2 Section 3553(a), in the Court's view, mandates prison time here
3 because this was a substantial fraud in which the defendant's
4 participation was part of what led to very numerous victims,
5 suffering very real harm. So even before we get to other
6 questions like deterrence, it's clear that the sentence must be
7 less than eight years and must be more than zero.

8 In terms of specific deterrence, I think I'm convinced
9 not only by the excellent defense submission but really by the
10 defendant's own statement that specific deterrence is probably
11 not warranted here. This defendant is probably not going to
12 commit future offenses, not the least because of the harm that
13 he foreseeably, in effect, did to his own family. So I don't
14 think he'll make that mistake again.

15 General deterrence is one of the most difficult
16 aspects to calculate in a situation like this because, as I
17 indicated, the criminological studies which go back over 200
18 years, it's one of the first areas that was studied, but it's a
19 very difficult one to study in a meaningful way because there's
20 so many factors involved. And to get technical for a moment,
21 you can't really do a meaningful regression analysis in this
22 area because there are too many imponderable factors, but there
23 is at least a consensus as to the following: First, that the
24 most important factor of all is catching defendants, and
25 catching them in this and other schemes on a regular basis.

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1 That's not really a guide to this Court in imposing sentence in
2 an individual case, but I just mention that so the record is
3 complete.

4 The second most important factor is some prison time,
5 and I must say that's also consistent with the Court's own
6 experience now in 21 years of being a judge. Nothing sends the
7 same deterrent message in a white-collar case as actual prison
8 time. But the studies, which are far from definitive,
9 nevertheless suggest that short of real extremes, like 20, 30,
10 40 years, added time beyond a certain modest minimum doesn't
11 serve a sufficient or even calculable additional deterrent,
12 general deterrent effect. So there's no study, literally no
13 study, that shows that, as I mentioned before, six years is
14 three times better in deterrence or even twice as good in
15 deterrence as two years. No one knows the answer to how much.
16 We know that some prison time is necessary. That's all we
17 really know. Yes, capital punishment serves a further
18 deterrent effect, but we're not in that kind of situation here.

19 So we come back to other factors, like considering
20 disparities between sentences, considering the defendant's
21 character, which is always a factor that looms very large in
22 this Court's sentencing. And there's no sure way to arrive at
23 a perfect sentence, but Section 3553(a) also says that when in
24 doubt, do not impose more than is necessary to achieve the
25 functions of Section 3553.

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1 So weighing all that together, I think the right
2 sentence is 18 months. So the sentence of the Court is that
3 the defendant is sentenced to 18 months in prison to be
4 followed by three years of supervised release on terms I'll get
5 to in a minute. No fine will be imposed because there is a
6 very substantial restitution amount and a forfeiture amount
7 that must be paid. There's also a mandatory special assessment
8 of \$100.

9 In connection with restitution and forfeiture, did the
10 government prepare appropriate orders?

11 MS. MAGDO: Yes, your Honor. We had submitted the
12 preliminary order of forfeiture money judgment back at the time
13 of the plea, and we have now entered a final order. And with
14 respect to the restitution, the parties have agreed to the
15 restitution, and we submitted an order earlier today. I'm
16 sorry for the last-minute notice with the --

17 THE COURT: Let me just fish that out. I may have
18 left that downstairs. Do you have another copy?

19 MS. MAGDO: I do have extra copies.

20 THE COURT: So the restitution is in a total amount of
21 \$2,124,182.66, but there is joint and several liability with
22 Mr. Ekdeshman. And the order appropriately, while spelling out
23 to whom the restitution must be paid, does not indicate the
24 terms of payment for this defendant. I will, by the way, sign
25 right now the restitution order and give it to my courtroom

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1 deputy to docket. But the terms of the restitution are that in
2 addition to being joint and several, it will be paid at the
3 rate of 10 percent of this defendant's gross monthly income
4 beginning with the second month of his supervised release.

5 Now, there will also be imposed, so far as supervised
6 release is concerned, the mandatory conditions that the
7 defendant not commit any federal, state, or local crime; that
8 he not unlawfully possess a controlled substance; that within
9 15 days of his release from imprisonment, he submit to one drug
10 test to be followed by two periodic drug tests; and that he
11 cooperate in the collection of DNA. There will also be imposed
12 the standard conditions one through 13. They appear on the
13 face of the judgment and will be gone over with the defendant
14 by the probation officer when the defendant reports to begin
15 his period of supervised release.

16 Finally, there are the special conditions. First,
17 that the defendant must participate in an outpatient treatment
18 program for drug and alcohol abuse on the standard terms and
19 conditions; second, that he must provide the probation officer
20 with access to any requested financial information; third, that
21 he must not open new credit card charges or additional lines of
22 credit without the express prior approval of the probation
23 officer unless he is in compliance with the 10 percent
24 installment payment schedule; and, lastly, that he will be
25 supervised by the district of his residence.

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1 Now, before we talk about surrender date and right of
2 appeals, is there anything else that either counsel needs to
3 raise with the Court? Anything further from the government?

4 MS. MAGDO: Your Honor, my only request would be that
5 the list of the victims as attached to the restitution order be
6 filed under seal.

7 THE COURT: Yes, that makes perfect sense. That will
8 be done.

9 MS. MAGDO: Thank you.

10 THE COURT: Anything from the defense?

11 MR. SORRENTINO: Nothing. I think we'll have a
12 request of your Honor when we move on to the surrender date.

13 THE COURT: Yes. So let me ask my courtroom deputy.
14 We would probably have a surrender date about 90 days from
15 here.

16 THE DEPUTY CLERK: October 27, a Friday.

17 THE COURT: October 27 at 2:00 p.m., any problems with
18 that?

19 MR. SORRENTINO: Judge, he would surrender to the
20 marshals, not to his place of designation?

21 THE COURT: That's OK if he wants to do that. Don't
22 you prefer to have him surrender to the place of designation?

23 MR. SORRENTINO: I was going to ask your Honor to make
24 a recommendation that he be incarcerated at Fort Dix since
25 his --

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1 THE COURT: Well, I will make that recommendation,
2 but, as you know, I can't order that.

3 MR. SORRENTINO: Yes.

4 THE COURT: But I think you would prefer, you tell me,
5 that wherever he's designated --

6 MR. SORRENTINO: I would prefer he surrender right
7 there.

8 THE COURT: -- surrender at the point of designation,
9 otherwise he gets transported on the local bus, which is not a
10 happy thing usually.

11 MR. SORRENTINO: Yes, you're right, your Honor. We
12 want him to go right to the facility.

13 THE COURT: Very good. Mr. Servider, you have a right
14 to appeal the sentence. Do you understand?

15 THE DEFENDANT: Yes.

16 THE COURT: If you can't afford counsel for the
17 appeal, the court will provide one for you free of charge. Do
18 you understand that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Very good.

21 MS. MAGDO: Your Honor, I'm sorry. The government
22 moves to dismiss any underlying counts.

23 THE COURT: Very good. That motion is granted.

24 MS. MAGDO: Thank you.

25 (Adjourned)